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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,950	12/14/2003	Jeffrey D. Davies	111803.P001	3725

7590 05/16/2008
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EXAMINER

SPISICH, GEORGE D

ART UNIT	PAPER NUMBER
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3616

MAIL DATE	DELIVERY MODE
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05/16/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/735,950	Applicant(s) DAVIES, JEFFREY D.	
	Examiner GEORGE D. SPISICH	Art Unit 3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on February 25, 2008 (RCE).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-29 and 44-51 is/are pending in the application.
- 4a) Of the above claim(s) 44-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-29 and 49-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 25, 2008 has been entered.

Election/Restrictions

Newly submitted claims 44-48 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The method of "adapting an existing ATV transmission" is considered a different grouping for restriction that the originally examiner claims.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 44-48 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Applicant is reminded that the Restriction of 11/21/05 required an election of a particular group. The election was made in the response of 2/14/06 these claims/this group has previously been acted upon. Applicant cannot add claims (which are similar

to non-elected originally filed claims 1-17) that are not related to the originally elected Group. Examiner maintains that these claims are diverse and pose a burden to the Examiner.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 18-29 and 49-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 18,26 and 49 include a limitation that "the transmission is located between the drivers legs when seated on the ATV". This limitation is unclear and assume at particular orientation of position of a body part of an occupant of the ATV when seated. It is not certain that a person's legs (based on size or position) would be in the same location and therefore is unclear as to the scope of the claim.

Claims 18,26 and 49 include a limitation "without removing an auxiliary starter from the ATV's engine". This limitation is unclear since it is unclear when an auxiliary starter is being claimed.

Claims 24,25,28,29,50 and 51 relate to a vehicle model and remain inherently unclear. The transmission and vehicle structure is all that is relevant in a patent claim not the name of the particular vehicle that includes a transmission. More specifically, the transmissions in these models may not be the same from year to year, may have

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optional transmissions, or the vehicles model may be discontinued in the future, therefore, the claims are unclear.

Furthermore Claims 24,25,28,29,46,48,50 and 51 contain the trademark/trade name "Artic Cat", "Suzuki" (at least). Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe an ATV and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18,19 and 24-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pestotnik (USPN 6,182,784) (provided in Applicant's IDS) in view of Hasegawa et al. (USPUB 2003/0070848) and further in view of Grayson (USPN 5,247,845).

Examiner is giving limited weight to the portions of the claim that are mentioned in the 112 rejection above. With respect to the positioning of the occupants legs and the transmission, Examiner states that the positioning would be consistent with an occupant as claimed. Pestotnik discloses an ATV having a transmission, the transmission having a shaft and a housing and further having a power takeoff shaft (56a) that transfers energy to an external device. Pestotnik discloses a sub-transmission (see col. 6, lines 51-67) that includes a normal, low and "super" low speed/gear position. Furthermore, it is stated that the device is placed in a neutral position.

However, Pestotnik does not disclose power being transferred from the engine to the transmission without a belt or the transmission shaft or having a releasably connectable shaft extension that is coupled to the transmission shaft and "accessible" through an opening in the transmission housing.

Hasegawa et al. discloses the well known aspect of using an engine, a transmission and a PTO where the power from the engine is transferred to transmission shaft without a belt. Using a belt transmission is not the only type of transmission known or that would be compatible with the arrangement of Pestotnik. Any transmission known such as that shown in Hasegawa et al. (even though on a farm tractor) would be analogous and easily adapted for use on an ATV.

Grayson discloses a power takeoff arrangement having a transmission/drive shaft (12) and an opening through which a transmission shaft extension (30) is

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releasable coupled thereto. Providing a shaft member that transitions to a driven device is a well-known feature in transmission devices.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the arrangement of Pestotnik by providing a “beltless” transmission as taught by Hasegawa et al. and a transmission shaft extension/adapter that is releasably connectable to the transmission shaft through an opening in the transmission housing as taught by Grayson so as to provide an “adaptability” feature to the PTO arrangement and improve it’s versatility.

The combination of references teach energy that can be transferred to an external device without the removing of an auxiliary starter from the ATV's engine and broadly “accessed”.

With respect to Claims 24,25,28 and 29, Examiner is interpreting these claims to be a transmission that is an ATV transmission on a comparable vehicle as Hasegawa et al. and/or Pestotnik.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pestotnik in view Hasegawa et al. in further view of Grayson as applied to claims 18,19 and 24-29 above, and further in view of Laflamme (USPN 6,672,414).

Pestotnik in view Hasegawa et al. and Grayson does not disclose a PTO including a hydraulic pump.

Laflamme discloses an ATV having a PTO incorporating a hydraulic pump.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Pestotnik in view of Grayson by providing a PTO unit including a hydraulic pump as taught by Laflamme as a hydraulic pump is a versatile and useful means of powering an external device.

With respect to the limitation that the apparatus can generate at least 3000 psi of hydraulic pressure with a volume flow of 10 gallons per minute, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide components (PTO, transmission, engine, vehicle) that would allow for the claimed operation as providing a certain size is within the scope of one of ordinary skill in the art to meet a desired performance requirement.

Claims 21-23 and 49-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pestotnik in view of Hasegawa et al. and Grayson as applied to claims 18,19 and 24-29 above, and further in view of Yokoyama (USPN 5,144,852).

Pestotnik in view of Hasegawa et al. and Grayson do not specifically disclose a sub-transmission plate providing a neutral position as claimed. Although Pestotnik discloses a sub-transmission and a plurality of shift positions (col. 6, lines 51-67), Examiner is not relying on this detail to be a transmission plate containing a position.

Yokoyama (Fig. 1) discloses a shift plate having a plurality of positions. The relevance is merely in a providing a shift plate having position.

With respect to claims 22 and 23, the dependency of these claims from 21 does not require that a transmission shift plate be required to have a plurality of neutral

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positions and furthermore it is proper to use the terms “high”, “low” or “super low” positions to describe any gear position as these detail likewise are not claimed so as to be included in one arrangement. Therefore, it is proper to refer to a single gear position as high or low in one interpretation and low or super low in another.

It would have been obvious to one of ordinary skill in the art to use a shift plate arrangement as taught by Yokoyama in the sub-transmission gear selection arrangement as disclosed by Pestotnik so as to provide a position engagement and indication of the proper and desired gear position while providing a neutral position between two gear positions that may be called a high and low, or a low and super low, which is consistent with the gear positions disclosed by Pestotnik.

With respect to Claims 24,25,28 and 29, Examiner is interpreting these claims to be a transmission that is an ATV transmission on a comparable vehicle as Hasegawa et al. and/or Pestotnik.

Response to Arguments

Applicant's arguments filed February 25, 2008 have been fully considered but they are not persuasive.

With respect to Applicant's argument that vehicle models and transmissions used in the claimed models are readily identifiable in commercial literature, Examiner disagrees and maintains the rejection. A vehicle model is inherently unclear due to at least the temporary aspect of models and the transmissions that are matched with a particular model in a particular model year. Claiming that these transmission are for ATV's “up to an including” a particular model year is not sufficient.

With respect to Applicant's argument that the Pestotnik does not disclose delivering power to an apparatus in a neutral position while not driving the wheels, Examiner disagrees and maintains the rejection. Disclosing an arrangement for pumping water to put out forest fires that is operated from power from the engine when the vehicle is in neutral is disclosure that the vehicle is not moving (ie. In neutral), yet powering an accessory pump for pumping water.

With respect to Applicant's argument that the vehicle of Hasegawa (a farm tractor) is a larger vehicle than the ATV of Pestotnik and would not teach the use of a beltless transmission complete with a power takeoff, Examiner disagrees and maintains the rejection. Transmissions are easily taught to be included in a variety of vehicles and can readily be adapted to be used in an ATV.

With respect to Applicant's argument that Grayson does not an adaptation for a transmission shaft extension, Examiner disagrees and maintains the rejection. Grayson discloses a PTO shaft adapter for a drive shaft. The PTO of Pestotnik shows a transmission shaft extension. Grayson teaches the use of a shaft extension off of a drive/power transferring shaft which is analogous to the art of PTO's and properly modifies Pestotnik.

With respect to Applicant's argument that Examiner ignores the fact that the manufacturer of the transmissions used in the claimed vehicle ATV models did not provide a neutral position on the shift plate, this does not prevent Yokoyama from teaching this detail and properly modifying the base references.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GEORGE D. SPISICH whose telephone number is (571)272-6676. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

George D. Spisich
May 9, 2008

/Lesley D. Morris/

Supervisory Patent Examiner, Art Unit 3611